

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors:	Richard Mark Exley; Maria Theresa Barnes Leon; Hitesh Dholakia; Manoj Kumar Das		
Assignee:	Siebel Systems, Inc.		
Title:	UNIVERSAL APPLICATION NETWORK ARCHITECTURE		
Application No.:	10/653,028	Filing Date:	August 28, 2003
Examiner:	Van H. Nguyen	Group Art Unit:	2194
Docket No.:	OIC0107US	Confirmation No.	1558

Austin, Texas
November 2, 2009

Mail Stop ISSUE FEE
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION FOR REVIEW OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Dear Sir:

Applicant petitions for a review and correction of the patent term adjustment (PTA) that has been calculated for the above-noted application. As explained below, Applicant submits that the calculated PTA of 285 days is incorrect, and that in accordance with *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D.D.C. 2008), the correct PTA for the present application is 650 days.

A Notice of Allowance and Issue Fee(s) Due was mailed on September 15, 2009 (the "Notice of Allowance") for the present application. The Notice of Allowance set a due date of December 15, 2009 for payment of the issue fee. This petition is timely submitted along with or prior to the issue fee, in accordance with 37 C.F.R. § 1.705(b).

The Notice of Allowance included a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b). According to that determination, the PTA for the present application is 285 days. This calculation is explained on the Office's PAIR web site, which includes an outline of the Office's calculation. A copy of that calculation is attached.

In accordance with the 37 C.F.R. § 1.705(b)(2), Applicant states the following.

- (i) The correct patent term adjustment for the present application is **650 days**. This correction follows from the correct assessment of days that "overlap" in the calculation of PTA under 35 U.S.C. § 154(b)(2)(A). See *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D.D.C. 2008).
- (ii a) The period of adjustment under 37 C.F.R. § 1.703(a) is **678 days**, which is the sum of the following periods.
 - * 678 days, beginning on the day after October 28, 2004 (the date that is fourteen months after August 28, 2003, which is the date on which the application was filed under 35 U.S.C. § 111(a)) and ending on September 6, 2006 (the date of mailing of an action under 35 U.S.C. § 132).
- (ii b) The period of adjustment under 37 C.F.R. § 1.703(b) is **374 days**, beginning on the day after August 28, 2006 (the date that is three years after August 28, 2003, which is the date on which the application was filed under 35 U.S.C. 111(a)) and ending on September 6, 2007 (the date before Applicant's first Request for Continued Examination under 35 U.S.C. 132(b) was received and filed in the Office records).
- (ii c) No period of adjustment is applied in the present application under 37 C.F.R. § 1.703(c), since there was no delay due to an interference.
- (ii d) No period of adjustment is applied in the present application under 37 C.F.R. § 1.703(d), since there was no delay due to a seal or to a secrecy order.

- (ii e) No period of adjustment is applied in the present application under 37 C.F.R. § 1.703(e), since there was no delay due to an appeal.
- (ii f) The periods of adjustment in (ii a) and (ii b) include an overlap, which is to be deducted from the sum of the adjustment periods under 37 C.F.R. § 1.703(f). From the above statements, it is clear that the calendar days that actually overlap is the calendar period of 9 days, beginning on the day after August 28, 2006 and ending on September 6, 2006.

Section 1.703(f) provides that “[t]he term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping.” This sum is 678 + 374 days, less the 9-day period of overlap, resulting in 1043 days.

(Section 1.703(f) further provides that this period should be further adjusted “less the sum of the periods calculated under § 1.704.” This reduction is discussed below.)

- (iii) The present application is not subject to a terminal disclaimer.
- (iv) The following periods of time, which total 393 days, are deemed under the Office’s procedures to constitute “Applicant Delay” from deemed failures to engage in reasonable efforts to conclude processing or examination under 37 C.F.R. § 704.
 - * The 37-day period from the day after December 6, 2006 (three months after the Office action mailed on September 6, 2006) to January 12, 2007, when Applicant’s response was received at the Office.
 - * The 65-day period from the day after July 4, 2007 (three months after the Office action mailed on April 4, 2007) to September 7, 2007, when Applicant’s response was received at the Office.

- * The 4-day period from the day after February 28, 2008 (three months after the Office action mailed on November 28, 2007) to March 3, 2008, when Applicant's response was received at the Office.
- * The 151-day period from the day after March 3, 2008 (the date Applicant's response was received at the Office) to August 1, 2008, when Applicant's correcting or supplemental response was received at the Office.
- * The 136-day period from the day after August 1, 2008 (the date Applicant's response was received at the Office) to December 15, 2008, when Applicant's correcting or supplemental response was received at the Office.

The sum of these periods under § 1.704, as reflected in the attached calculation from the Office's PAIR web site, is $37 + 65 + 4 + 151 + 136 = 393$ days. The reduction under § 1.703(f) thus leads to a final PTA calculation of $1043 - 393 = 650$ days.

Applicant believes that the disparity between the above calculation and the attached calculation from the Office's PAIR web site arises from the Office's current practice of considering "overlap" days. Applicant understands that the Office considers the entire period of 374 days under § 1.703(b) to "overlap" with the period of 678 days under 37 C.F.R. § 1.703(a). In *Wyeth*, however, the District Court of the District of Columbia held that that approach is in conflict with the statutory language in 35 U.S.C. § 154.

Under the correct calculation, as described by the *Wyeth* court, only the 9 calendar days that are actually in common between these two periods are considered to "overlap" under § 154. The disparity in the count of overlap days (374 days vs. 9 days, which is a difference of 365

days) leads to the 365-day error between the Office's calculation of 285 days of PTA and the correct calculation of 650 days, as detailed above.


In view of this error, Applicant respectfully requests that the calculated patent term adjustment for the present application be corrected to indicate 650 days of patent term adjustment. The undersigned hereby authorizes that the fee under 37 C.F.R. § 1.18(e), and any other fees required for this submission, be charged to deposit account no. 502306.

I hereby certify that this correspondence is being submitted to the U.S. Patent and Trademark Office in accordance with 37 C.F.R. § 1.8 on 11/2/09 by being (a) transmitted via the USPTO's electronic filing system; or (b) transmitted by facsimile to 571-273-8300; or (c) deposited with the U.S. Postal Service as First Class Mail in an envelope with sufficient postage addressed to: Mail Stop ISSUE FEE, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450.


Cyrus F. Bharucha

2009 Nov 2
Date

Respectfully submitted,


Cyrus F. Bharucha
Attorney for Applicant
Reg. No. 42,324
512-439-5097
512-439-5099 (fax)

10/653,028 UNIVERSAL APPLICATION NETWORK ARCHITECTURE

11-02-
2009::16:40:40**Patent Term Adjustments**

Patent Term Adjustment (PTA) for Application Number: 10/653,028

Filing or 371(c) Date:	08-28-2003	USPTO Delay (PTO) Delay (days):	678
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	393
Post-Issue Petitions (days):	+0	Total PTA (days):	285
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
09-15-2009	Mail Notice of Allowance		
09-14-2009	Document Verification		
09-14-2009	Examiner's Amendment Communication		
09-11-2009	Examiner Interview Summary Record (PTOL - 413)		
09-14-2009	Notice of Allowance Data Verification Completed		
09-01-2009	Mail Examiner Interview Summary (PTOL - 413)		
08-27-2009	Examiner Interview Summary Record (PTOL - 413)		
06-30-2009	Date Forwarded to Examiner		
06-05-2009	Response after Non-Final Action		
03-05-2009	Mail Non-Final Rejection		
03-02-2009	Non-Final Rejection		
12-17-2008	Date Forwarded to Examiner		
12-15-2008	Response after Non-Final Action		136
11-13-2008	Mail Notice of Informal or Non-Responsive Amendment		↑
09-24-2008	Information Disclosure Statement considered		↑
09-24-2008	Information Disclosure Statement (IDS) Filed		↑
09-24-2008	Information Disclosure Statement (IDS) Filed		↑
08-28-2008	Date Forwarded to Examiner		↑
08-01-2008	Informal or Non-Responsive Amendment after Examiner Action		↑
08-01-2008	Response after Non-Final Action		151
07-23-2008	Mail Notice of Informal or Non-Responsive Amendment		↑
05-07-2008	Date Forwarded to Examiner		↑
03-03-2008	Informal or Non-Responsive Amendment after Examiner Action		↑
03-03-2008	Response after Non-Final Action		4
11-28-2007	Mail Non-Final Rejection		↑
11-26-2007	Non-Final Rejection		
09-12-2007	Date Forwarded to Examiner		
09-12-2007	Date Forwarded to Examiner		
09-07-2007	Request for Continued Examination (RCE)		65
09-12-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
09-07-2007	Request for Extension of Time - Granted		↑
09-07-2007	Workflow - Request for RCE - Begln		↑
04-04-2007	Mail Final Rejection (PTOL - 326)		↑

COPY

COPY

04-02-2007	Final Rejection		
01-12-2007	Miscellaneous Incoming Letter		
01-12-2007	New or Additional Drawing Filed		
01-25-2007	Date Forwarded to Examiner		
01-12-2007	Response after Non-Final Action		37
01-12-2007	Request for Extension of Time - Granted		↑
09-13-2006	Correspondence Address Change		↑
09-13-2006	Change in Power of Attorney (May Include Associate POA)		↑
09-06-2006	Mail Non-Final Rejection	678	
09-05-2006	Non-Final Rejection	↑	
07-29-2006	IFW TSS Processing by Tech Center Complete	↑	
05-11-2005	Case Docketed to Examiner in GAU	↑	
08-03-2004	Rescind Nonpublication Request for Pre Grant Publication	↑	
04-26-2004	Case Docketed to Examiner in GAU	↑	
03-09-2004	Transfer Inquiry to GAU	↑	
01-09-2004	Application Return from OIPE	↑	
01-09-2004	Application Return TO OIPE	↑	
01-09-2004	Application Dispatched from OIPE	↑	
01-09-2004	Application Is Now Complete	↑	
12-05-2003	Payment of additional filing fee/Preexam	↑	
12-05-2003	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant	↑	
11-24-2003	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	
08-28-2003	PGPubs nonPub Request	↑	
11-12-2003	Cleared by OIPE CSR	↑	
10-09-2003	IFW Scan & PACR Auto Security Review	↑	
08-28-2003	Initial Exam Team nn	↑	

Close Window